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10/032,035	12/31/2001	Keizo Ohnishi	217662US3	5168

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EXAMINER

KIM, TAE JUN

ART UNIT	PAPER NUMBER
3746	8

DATE MAILED: 06/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/032,035	OHNISHI ET AL.
	Examiner	Art Unit
	Ted Kim	3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 02 June 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) 2-6,8-11,13-16 and 18-20 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1, 7, 12, 17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 2-6, 8-11, 13-16, 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7. As elected claims 12 and 17 depend on claims 1, and 7, these claims have also been considered implicitly elected.

Applicant's election with traverse of species X in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the office action provides a conclusory statement regarding "this application contains claims directed to the following patentably distinct species of the claimed invention" and that this is not in accordance with the standards set by MPEP 816. Applicant's arguments regarding MPEP 816 take the quote out of context – as this section is not directly applicable to the election of species.

MPEP 816 states:

**" Give Reasons for Holding of Independence or Distinctness**

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

For example, relative to combination and a subcombination thereof, the examiner should point out the reasons why he or she considers the subcombination to have utility by itself or in other combinations, and why he or she considers that the combination as claimed does not rely on the subcombination as its essential distinguishing part.

Each other relationship of claimed invention should be similarly treated and the reasons for the conclusions of distinctness of invention as claimed set forth.

The separate inventions should be identified by a grouping of the claims with a short description of the total extent of the invention claimed in each group, specifying the type or relationship of each group as by stating the group is drawn to a process, or to subcombination, or to product, etc., and should indicate the classification or separate status of each group, as for example, by class and subclass. See MPEP § 809.

Note from paragraph 8.13.

"

When considered in context, especially the later paragraphs, it is clear that Section 816 is directed to the other ways of restricting applications, such as process or subcombination or product. There is not even a hint or suggestion that an election of species is referred to. Applicant's arguments are mislead because they rely on an incorrect interpretation of the MPEP's treatment of restriction/election of species.

Applicant is referred to MPEP 809 – 8.01, cited below for the correct presentation of an election of species and by which the previous election/restriction requirement complies:

**“ 809.02(a) Election Required**

Where generic claims are present, the examiner should send a letter including only a restriction requirement or place a telephone requirement to restrict (the

latter being encouraged). See MPEP § 812.01 for telephone practice in restriction requirements.

Action as follows should be taken:

(A) Identify generic claims or indicate that no generic claims are present. See MPEP § 806.04(d) for definition of a generic claim.

(B) Clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, *to which claims are restricted*. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. In the absence of distinct figures or examples to identify the several species, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species *cannot be conveniently identified*, the claims may be grouped in accordance with the species to which they are restricted.

(C) Applicant should then be required to elect a single disclosed species under 35 U.S.C. 121, and advised as to the requisites of a complete reply and his or her rights under 37 CFR 1.141.

For generic claims, a search should not be made and art should not be cited. A 1-month (not less than 30 days) shortened statutory period will be set for reply when a written requirement is made without an action on the merits. This period may be extended under the provisions of 37 CFR 1.136(a). Such action will not be an "action on the merits" for purposes of the second action final program.

To be complete, a reply to a requirement made according to this section should include a proper election along with a listing of all claims readable thereon, including any claims subsequently added.

In those applications wherein a requirement for restriction is accompanied by an action on all claims, such action will be considered to be an action on the merits and the next action should be made final.

#### ¶.8.01 Election of Species

This application contains claims directed to the following patentably distinct species of the claimed invention: [1].

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, [2] generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

#### Examiner Note

In bracket 2, insert the appropriate generic claim information."

The traversal is on the further grounds that the office action has not provided any statement of how the species are mutually exclusive. In response, the Examiner notes that the traversal is applicant's opportunity to show any purported flaws in the election of species – including reasons why the species would not be mutually exclusive. If

applicant's position is genuinely that the species are not mutually exclusive, applicant is obligated to produce evidence from the application rather than a mere allegation that the Examiner has not met the MPEP standard of proving the species are mutually exclusive.

The traversal is on the further grounds that the search of the entire application would not constitute a *serious* burden. It is noted that due to the number and nature of the different species – it is the Examiner's judgment that they would entail a serious burden in *searching and examination* of them all, regardless of whether they are all directed to combustors.

The requirement is still deemed proper and is therefore made FINAL.

*Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "105" has been used to designate both a clearance and a spring clip. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Figures 16A, B, 17A, B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 1, lines 2-3 claim “an induction chamber.” This term is not believed to appear in the specification.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1, 7, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis et al (3,974,647). Lewis et al teach a gas turbine combustor in which a part or all of the wall of the combustor 2 disposed within an induction chamber is formed with an acoustic energy absorbing member 23 (col. 1, lines 9-12) that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 23 and a back plate 12 disposed outside in a

radial direction; cooling air from fan passage 11 is introduced into the gap therebetween (col. 2, lines 1-3).

7. Claims 1, 7, 12, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al (5,417,056). Johnson et al teach a gas turbine combustor in which a part or all of the wall of the combustor 42 disposed within an induction chamber is formed with an acoustic energy absorbing member 49 (col. 5, lines 44-57) that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 49, 200 (Fig. 7, col. 6, lines 15-17) and a back plate 161 disposed outside in a radial direction; cooling air is introduced into the gap (col. 6, lines 11+) there between. The distances L1 (longitudinal) and L2 (circumferential) between the openings on the perforated plate are illustrated and/or disclosed as having a relationship of L1/L2 in the claimed range (see Fig. 7).

8. Claims 1, 7, 12, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Cowan et al (4,199,936). Cowan et al teach a gas turbine combustor (the embodiments of Fig. 2 or Fig. 3 or Fig. 4) in which a part or all of the wall of the combustor disposed within an induction chamber is formed with an acoustic energy absorbing member that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate with perforations 27 or 28 (or 53, 56 – Fig. 4) and a back plate 22 disposed outside in a radial direction; cooling air is introduced into the gap therebetween. The distances L1 (longitudinal) and L2 (circumferential) between the openings 27 or 28 (or 53, 56 – Fig. 4)

on the perforated plate are illustrated and/or disclosed as having a relationship of L1/L2 in the claimed range.

9. Claims 1, 7, 12, 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Sattinger et al (6,530,221). Sattinger et al teach a gas turbine combustor in which a part or all of the wall of the combustor (the embodiment of Fig. 3 or Fig. 4 or Fig. 5) disposed within an induction chamber is formed with an acoustic energy absorbing member that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 52 and a back plate 50 disposed outside in a radial direction; cooling air is introduced into the gap therebetween. The distances L1 (longitudinal) and L2 (circumferential) between the openings 54 (see Fig. 2B or Fig. 5B) on the perforated plate are illustrated and/or disclosed as having a relationship of L1/L2 in the claimed range.

10. Claims 1, 7, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0576717. EP '617 teach a gas turbine combustor in which a part or all of the wall of the combustor disposed within an induction chamber 21 is formed with an acoustic energy absorbing member that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 19 and a back plate 18 disposed outside in a radial direction; cooling air 23 is introduced into the gap therebetween.

11. Claims 1, 7, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0971172 of the IDS. EP '172 teach a gas turbine combustor in which a part or all of the

wall of the combustor disposed within an induction chamber is formed with an acoustic energy absorbing member that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 27 and a back plate 24 disposed outside in a radial direction; cooling air is introduced into the gap therebetween.

12. Claims 1, 7, 12, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2309296 of the IDS. GB '296 teaches a gas turbine combustor in which a part or all of the wall of the combustor disposed within an induction chamber is formed with an acoustic energy absorbing member that can absorb the acoustic energy of a combustion variation generated within the combustor. The acoustic energy absorbing member is constructed of a perforated plate 104 and a back plate 109 disposed outside in a radial direction; cooling air is introduced into the gap therebetween. The distances L1 (longitudinal) and L2 (circumferential) between the openings 113 on the perforated plate are illustrated and/or disclosed as having a relationship of L1/L2 in the claimed range.

13. Claims 1, 7, 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 0971172 of the IDS.

14. Claims 1, 7, 12, 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by JP 2001-90939 of the IDS. While the publication date is after applicant's priority date, it is noted that Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of Johnson et al (5,417,056), Cowan et al (4,199,936), Sattinger et al (6,530,221), EP 0576717, EP 0971172 or GB 2309296, as applied above and further in view of Napoli (5,279,127). The prior art teach various aspects of the claimed invention and illustrate the claimed range for the spacing between the openings in the perforated plate. In order to remove any ambiguity, Napoli is cited to teach that it is old and well known in the art to space the holes 80 (Fig. 5) in a perforated plate in a substantially constant spacing for an even distribution (col. 5, lines 55-60) – which falls within the claimed range by having an L1/L2 of 1. It would have been obvious to one of ordinary skill in the art to employ substantially even spacing, as taught by Napoli, as being old and well known for combustor walls, in order to facilitate ease of manufacture and/or low cost. Alternately, as each of the applied prior art illustrate the claimed range, it would have been obvious to employ the claimed range as being an obvious matter of using the workable ranges in the art.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Ted Kim whose telephone number is 703-308-2631. The Examiner can be reached on regular business hours before 5:00 pm, Monday to Thursday and every other Friday.

The fax numbers for the organization where this application is assigned are 703-872-9302 for Regular faxes and 703-872-9303 for After Final faxes.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe, can be reached on 703-308-0102.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist of Technology Center 3700, whose telephone number is 703-308-0861.

General inquiries can also be directed to Technology Center Customer Service Office at 703-306-5648 or the Patents Assistance Center whose telephone number is 800-786-9199. Furthermore, a variety of online resources are available at

<http://www.uspto.gov/main/patents.htm>



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